

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RYAN J. BONIVERT,

Plaintiff,

v.

CITY OF CLARKSTON, et al.,

Defendants.

NO: 2:14-CV-0056-TOR

ORDER RE: MOTIONS FOR
PARTIAL SUMMARY JUDGMENT
AND DISMISSAL

BEFORE THE COURT are the following motions: Defendants Ken Bancroft, Jane Doe Snyder, and Jane Doe Snyder's Motion for Partial Summary Judgment Dismissal (ECF No. 26); Defendants Joel Hastings, Jane Doe Combs and Jane Doe Purcell's Motion for Partial Summary Judgment Dismissal (ECF No. 29); Plaintiff's Motion to Dismiss Defendants Joel Hasting, John H. Singleton, Ken Bancroft, and Jane Doe Snyder (ECF No. 32); and Plaintiffs' Motion to File Amended Complaint (ECF No. 36). These matters were heard with oral argument on November 13, 2014. Samuel T. Creason and Theodore O. Creason appeared on

1 behalf of Plaintiff. Thomas P. Miller, Ann E. Trivett, and Frieda K. Zimmerman
2 appeared on behalf of various Defendants. The Court has reviewed the briefing
3 and the record and files herein and heard from counsel, and is fully informed.

4 **BACKGROUND**

5 Plaintiff filed his initial Complaint in this action on February 25, 2014,
6 alleging that Defendants violated 42 U.S.C. § 1983 when they, *inter alia*, entered
7 and searched Plaintiff's home without a warrant, applied excessive force, and
8 subjected Plaintiff to degrading treatment while in custody. ECF No. 1. Plaintiff
9 has sued several County of Asotin and City of Clarkston officials in their
10 individual capacities, as well as their spouses. *Id.* Plaintiff has also sued the
11 County of Asotin and the City of Clarkston. *Id.*

12 Currently before the Court are several motions regarding which individuals
13 are properly named as defendants in this action. Defendants move to dismiss, *with*
14 prejudice, (1) Defendants Ken Bancroft and Joel Hastings on the ground that
15 Plaintiff's claims against these defendants are duplicative and redundant of
16 Plaintiff's claims against the City and County; and (2) Defendant Jane Does
17 Snyder (spouse of Gary Snyder), Snyder (spouse of Joseph Snyder), Purcell
18 (spouse of Paul Purcell), and Combs (spouse of Daniel Combs) on the ground that
19 these spouses had no involvement in the incident that gave rise to this action and
20 thus are improper defendants under section 1983. ECF Nos. 26, 29.

1 Plaintiff voluntarily moves to dismiss, *without* prejudice, Defendants Ken
2 Bancroft, Joel Hastings, Jon H. Singleton,¹ and Jane Doe Snyder (spouse of Gary
3 Snyder). ECF No. 32. Plaintiff also moves to amend his Complaint to name the
4 following parties, previously only identified as Does: Claudia A. Combs, Teresa R.
5 Purcell, Jennifer L. Snyder, Deputy Shawn Rudy, and Deputy Grimm. ECF No.
6 36.

7 **DISCUSSION**

8 **A. Motions for Partial Summary Judgment and Voluntary Dismissal**

9 1. Legal Standard for Summary Judgment

10 Summary judgment may be granted to a moving party who demonstrates
11 “that there is no genuine dispute as to any material fact and that the movant is
12 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party
13 bears the initial burden of demonstrating the absence of any genuine issues of
14 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then
15 shifts to the non-moving party to identify specific genuine issues of material fact
16 which must be decided by a jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
17 242, 256 (1986). “The mere existence of a scintilla of evidence in support of the
18

19 ¹ Previously, and incorrectly, identified as John H. Singleton in Plaintiff’s initial
20 Complaint and Motion to Dismiss.

1 plaintiff's position will be insufficient; there must be evidence on which the jury
2 could reasonably find for the plaintiff." *Id.* at 252.

3 For purposes of summary judgment, a fact is "material" if it might affect the
4 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
5 such fact is "genuine" only where the evidence is such that a reasonable jury could
6 find in favor of the non-moving party. *Id.* In ruling upon a summary judgment
7 motion, a court must construe the facts, as well as all rational inferences therefrom,
8 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,
9 378 (2007). Only evidence which would be admissible at trial may be considered.
10 *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002).

11 2. Legal Standard for Voluntary Dismissal

12 Pursuant to Federal Rule of Civil Procedure 41(a)(2), "an action may be
13 dismissed at the plaintiff's request only by court order, on terms that the court
14 considers proper . . . Unless the order states otherwise, a dismissal under this
15 paragraph (2) is without prejudice." Fed. R. Civ. P. 41(a)(2). "A district court
16 should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a
17 defendant can show that it will suffer some plain legal prejudice as a result." *Smith*
18 *v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). The decision to grant or deny a
19 motion pursuant to Rule 41(a)(2) is within the sound discretion of the court. *Sams*
20 *v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir. 1980). District courts have

1 broad discretion in deciding whether to dismiss actions *with* or *without* prejudice.
2 *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058
3 (9th Cir. 2011). However, “[a] dismissal under Rule 41(a)(2) normally is *without*
4 prejudice, as explicitly stated in the rule,” *Smith*, 263 F.3d at 976 (emphasis
5 added).

6 3. Defendant Jon H. Singleton

7 Plaintiff moves to voluntarily dismiss Defendant Singleton without
8 prejudice. ECF No. 32. Defendants offer no objection. Therefore, this Court
9 dismisses Defendant Singleton *without* prejudice.

10 4. Defendants Ken Bancroft & Joel Hastings

11 Defendants move to dismiss Defendants Bancroft and Hastings with
12 prejudice on the ground that Plaintiff’s claims, similarly alleged against the County
13 of Asotin and City of Clarkston, are duplicative. ECF Nos. 26 at 2-3; 29 at 2.
14 Plaintiff moves to dismiss Defendants Bancroft and Hastings *without* prejudice
15 because discovery has not yet been completed and there exists the possibility that
16 Defendants Bancroft and Hastings could be liable on other potential claims. ECF
17 Nos. 32; 33 at 3.

18 This Court finds Defendants Bancroft and Hastings should be dismissed
19 without prejudice. Although Defendants aptly note that Plaintiff’s current claims
20 against these Defendants are duplicative of Plaintiff’s claims against the City and

1 County, *see Hafer v. Melo*, 502 U.S. 21, 25 (1991), this Court is persuaded by
2 Plaintiff's response. Plaintiff's counsel contacted Defendants' counsel in June
3 2014, voicing Plaintiff's intention to voluntarily dismiss Defendants Bancroft and
4 Hastings after conducting all necessary depositions. ECF Nos. 34 at 2; 34-1. As
5 Plaintiff's counsel proposed, Plaintiff would either amend his Complaint or
6 voluntarily dismiss Defendants Bancroft and Hastings depending on what was
7 uncovered during depositions. ECF No. 34-1. After all, the deadline for amending
8 pleadings in this case was not until October 10, 2014. ECF No. 22. Defendants
9 did not raise any objection. ECF No. 33 at 5. Instead, Defendants filed their
10 motions seeking to dismiss, with prejudice, Defendants Bancroft and Hastings on
11 September 9 and September 18, respectively—weeks before the amendment
12 deadline, one day before the deposition of Defendant Bancroft, and in the midst of
13 other depositions for this matter. *Id.* Accordingly, this Court, in its broad
14 discretion, dismisses Defendants Bancroft and Hastings *without* prejudice.

15 5. Defendant Jane Does

16 Defendants move to dismiss Defendant Jane Does Snyder (Joseph), Snyder
17 (Gary), Purcell, and Combs with prejudice on the ground that the spouses of
18 individually named defendants are not liable under section 1983. ECF Nos. 26 at
19 6-8; 29 at 3. Plaintiff opposes dismissing Defendant Jane Does Snyder (Joseph),
20 Purcell, and Combs on the ground that, as part of the marital community of the

1 tortfeasor spouses, they are subject to liability for a judgment in this case and have
2 a statutory right to defend that community. ECF No. 33 at 6-11. Plaintiff moves to
3 dismiss Defendant Jane Doe Snyder (ex-spouse of Gary Snyder), without
4 prejudice, in light of a recent disclosure that Gary Snyder is divorced. ECF Nos.
5 32; 33 at 6 n.1.

6 In the State of Washington, whether a marital community is liable for the
7 torts of a spouse depends on whether the act either “(1) results or is intended to
8 result in a benefit to the community or (2) is committed in the prosecution of the
9 business of the community.” *Clayton v. Wilson*, 168 Wash.2d 57, 63 (2010)
10 (quoting *LaFramboise v. Schmidt*, 42 Wash.2d 198, 200 (1953)); *see also Kilcup v.*
11 *McManus*, 64 Wash.2d 771, 781 (1964) (“The community should be and is liable
12 for wrong inflicted by the husband in the execution of his public office or
13 employment occurring through his ignorance, carelessness or mistaken ideas of his
14 official powers and duties.”). “Torts which can properly be said to be done in the
15 management of community business, or for the benefit of the community, will
16 remain community torts with the community and the tortfeasor separately liable.”
17 *deElche v. Jacobsen*, 95 Wash.2d 237, 245 (1980).² When a non-tortfeasor spouse

18 ² On the other hand, when the tort is not committed for the benefit of the
19 community or during prosecution of community business, the tortfeasor is primarily
20 liable and the plaintiff may only recover from the tortfeasor’s one-half interest in

1 is joined in the action but there are no allegations of personal involvement, the
2 entry of judgment would run against the marital community rather than against the
3 non-tortfeasor spouse as an individual. *See Delano v. Tennent*, 138 Wash. 39, 47
4 (1926); *Douglas Nw., Inc. v. Bill O'Brien & Sons Constr., Inc.*, 64 Wash.App. 661,
5 689 (1992). Although a non-tortfeasor spouse does not necessarily need to be
6 named and served,³ past practice strongly suggests the procedure is permissive, *see*
7 *e.g., Alexander v. Sanford*, 181 Wash.App. 135, 183 (2014) (finding no authority
8 prohibiting the practice of naming spouses as codefendants in a complaint so as to
9 create community liability), if not also encouraged.⁴

10 marital property if the separate property is insufficient to satisfy the judgment.
11
deElche, 95 Wash.2d at 246.

12³ RCW 4.08.040 states the following regarding joining spouses as defendants:

13 If the spouses or the domestic partners are sued together, either or
14 both spouses or either or both domestic partners may defend, and if
15 one spouse or one domestic partner neglects to defend, the other
16 spouse or other domestic partner may defend for the nonacting spouse
17 or nonacting domestic partner also. Each spouse or each domestic
partner may defend in all cases in which he or she is interested,
whether that spouse or that domestic partner is sued with the other
spouse or other domestic partner or not.

18⁴ Washington Practice Series states the following regarding joining a non-tortfeasor
19 spouse as a defendant when seeking to enter judgment against community
20 property:

1 Here, this Court finds permissive Plaintiff's inclusion of Jane Does Purcell,
 2 Combs, and Snyder (Joseph), and their respective marital communities, as
 3 defendants in this action. Plaintiff has alleged a basis for individual liability
 4 against Defendants Purcell, Combs, and Joseph Snyder, arising out of their
 5 employment with the City of Clarkston and County of Asotin. Because these acts
 6 allegedly arose during Defendants' employ, an activity presumptively intended to
 7 benefit their respective marital communities, those communities can be held liable
 8 should judgment be entered against each individual Defendant. *See deElche*, 95
 9 Wash.2d at 245046; *Kilcup*, 64 Wash.2d at 781. Thus, although not mandatory,
 10 the Defendants' spouses, and the marital communities of which they are a part, are
 11 properly joined in this action for the sole purpose of entering judgment against
 12 their marital communities.

13 An action may be commenced against a married person, and the
 14 litigation is presumed to be against the community. The named spouse
 15 has the authority to defend on behalf of the community. The resulting
 16 judgment is presumed to be a judgment against the community,
 17 though the presumption may be overcome by showing that the
 18 judgment is based solely on the separate obligation of one spouse.
To be cautious, and to avoid any question about whether the action is
intended to be against the community, most plaintiff's attorneys will
simply name both spouses as defendants from the outset, in all cases
against married persons. If one spouse's name is unknown, he or she
 19 can be designated John Doe or Jane Doe.

20 14 Wash. Prac., Civil Procedure § 11:19 (2d ed.) (emphasis added).

1 Accordingly, the Court declines to dismiss Defendant Jane Does Snyder
2 (Joseph), Purcell, and Combs. Further, because Plaintiff still may be able to seek
3 judgment against the marital community previously comprised of Defendant Gary
4 Snyder and Jane Doe Snyder, this Court dismisses all claims against Defendant
5 Jane Doe Snyder (former spouse Gary) *without* prejudice.

6 **6. Motion to Amend**

7 Rule 15(a) provides that, except in circumstances not present here, “a party
8 may amend its pleading only with the opposing party’s written consent or the
9 court’s leave,” which “[t]he court should freely give . . . when justice so requires.”
10 Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has directed that this policy be applied
11 with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
12 1051 (9th Cir. 2003) (citation omitted). In ruling upon a motion for leave to
13 amend, a court must consider whether the moving party acted in bad faith or
14 unduly delayed in seeking amendment, whether the opposing party would be
15 prejudiced, whether an amendment would be futile, and whether the movant
16 previously amended the pleading. *United States v. Corinthian Colleges*, 655 F.3d
17 984, 995 (9th Cir. 2011). “Absent prejudice, or a strong showing of any of the
18 remaining [factors], there exists a *presumption* under Rule 15(a) in favor of
19 granting leave to amend.” *C.F. ex rel. Farnan v. Capistrano Unified School Dist.*,
20 654 F.3d 975, 984 (9th Cir. 2011) (quoting *Eminence Capital*, 316 F.3d at 1051).

1 Plaintiff filed his initial Complaint in this action on February 24, 2014. ECF
2 No. 1. Pursuant to this Court's original Scheduling Order, the deadline to amend
3 the pleadings or add parties was September 10, 2014. ECF No. 17. However, the
4 parties subsequently filed a joint motion to extend this deadline, ECF No. 20,
5 which the Court granted. Pursuant to the amended Scheduling Order, the deadline
6 to amend the pleadings or add parties was October 10, 2014. ECF No. 22.

7 Plaintiff timely seeks leave to amend his Complaint to identify several John
8 and Jane Does who were either previously identified as spouses to and in a marital
9 community with named Defendants or were unnamed law enforcement officers of
10 Asotin County Sheriff's Office and Clarkston Police Department. ECF No. 36 at
11 2. After conducting discovery, Plaintiff has identified the following Doe
12 defendants:

- 13 1. Claudia A. Combs, previously identified as Jane Doe Combs;
- 14 2. Teresa R. Purcell, previously identified as Jane Doe Purcell;
- 15 3. Jennifer L. Snyder, previously identified as Jane Doe Snyder (spouse
16 Joseph);
- 17 4. Deputy Shawn Rudy, previously identified as John Doe I; and
- 18 5. Deputy Grimm, previously identified as John Doe II.

19 *Id.* at 2-3.

1 This Court finds the factors weigh in favor of amendment. First, this Court
2 finds no evidence of bad faith or undue delay. Second, Defendants can hardly
3 claim prejudice considering Plaintiff's pending motion merely seeks to identify the
4 previously named John and Jane Does. Third, Plaintiff has not previously
5 amended his Complaint. Finally, regarding Defendants' sole challenge to
6 amendment, Plaintiff has alleged sufficient facts to overcome the futility analysis.
7 Because Plaintiff is merely seeking to name parties previously only identified as
8 Does, this Court does not find the proposed amendment futile. Accordingly, this
9 Court, within its wide discretion and pursuant to the liberal policy of granting leave
10 to amend, finds amendment here to be proper.

11 **ACCORDGINLY, IT IS HEREBY ORDERED:**

12 1. Defendants Ken Bancroft, Jane Doe Snyder, and Jane Doe Snyder's
13 Motion for Partial Summary Judgment Dismissal (ECF No. 26) is
14 **DENIED**
15 2. Defendants Joel Hastings, Jane Doe Combs and Jane Doe Purcell's
16 Motion for Partial Summary Judgment Dismissal (ECF No. 29) is
17 **DENIED.**
18 3. Plaintiff's Motion to Dismiss Defendants Joel Hastings, John H.
19 Singleton, Ken Bancroft, and Jane Doe Snyder (ECF No. 32) is
20

1 **GRANTED.** Defendants Hastings, Singleton, Bancroft, and Jane Doe
2 Snyder (ex-spouse of Gary Snyder) are dismissed *without* prejudice.

3 4. Plaintiffs' Motion to File Amended Complaint (ECF No. 36) is

4 **GRANTED.** Plaintiff is directed to file and serve his Amended
5 Complaint forthwith.

6 The District Court Executive is hereby directed to enter this Order, provide
7 copies to counsel, and adjust the caption of the case accordingly.

8 **DATED** November 17, 2014.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge